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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/880,195	06/13/2001	Kelvin Brian Dickinson	J3544(C)	6049

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UNILEVER  
PATENT DEPARTMENT  
45 RIVER ROAD  
EDGEWATER, NJ 07020

EXAMINER
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GOLLAMUDI, SHARMILA S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 11/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/880,195

Applicant(s)

DICKINSON ET AL.

Examiner

Sharmila S. Gollamudi

Art Unit

1616

-- **Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 August 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>6</u> | 6) <input type="checkbox"/> Other: _____.                                   |

### **DETAILED ACTION**

Supplemental Information Disclosure received July 17, 2002 is acknowledged.

Amendment B received August 29, 2002 is acknowledged.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1, 3, 5-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Kawasaki et al (5556970).**

Kawasaki et al teach hair oil formula containing castor oil (33%) and liquid paraffin (33%).

### ***Response to Arguments***

Applicant's arguments have been fully considered but they are not persuasive. Applicant argues that Kawasaki is not enabled since the prior art does not set forth any steps of preparing the oil. The examiner points out that allegations of lack of enablement of prior art must be factually supported and arguments of counsel cannot take the place of evidence in the record. See MPEP 716.01 (c). Further, MPEP 2121.01 states that the public was in possession "if one of ordinary skill in the art could have combined the publication's description of the invention with his or her own knowledge to make the claimed invention." In regards to the "consisting essentially of"

language, the examiner points out that page 7 of instant specification allows for the inclusion of optional ingredients that are lipid soluble.

**Claims 1, 3-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Jones (5116607).**

Jones teaches a hair dressing composition containing light petrolatum, light mineral oil, castor oil, olive oil, coconut oil, sesame oil, and almond oil, among other oils. The oils are in instant amounts (Note claim 5).

***Response to Arguments***

Applicant's arguments have been fully considered but they are not persuasive. Applicant argues that Jones composition is a cream and the instant invention is hair oil.

The examiner points out that although the preamble recites hair oil, the claim also recites a blend of oily components. The examiner points out that the preamble is given some weight for its structural limitation, however the preamble is not enough to patentably distinguish. Further, page 7 of instant specification recites optional ingredients such as polyols. These polyols are not lipophilic in nature; therefore the inclusion of these additives would yield a dispersion (cream). The recitation of "oily components" reads on Jones's lipophilic-based composition. Jones contains oily components in recited amounts and the instant claim language does not exclude other components in the composition.

**New Rejection based on new IDS**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1, 2, and 5-10 are rejected under 35 U.S.C. 102(b) as being anticipated by McCarthur (3,932,611).**

McCarthur discloses a hair dressing composition containing 86.8% white petroleum jelly, 2% beeswax, 7% olive oil, 2.6% castor oil, and 1.3% coconut oil (example).

### ***Response to Arguments***

Applicant's arguments have been fully considered but they are not persuasive. Applicant argues that Vernon uses petrolatum which is not the light mineral oil that are set forth in the specification.

The examiner points out that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The instant specification sets forth an example containing "oily-based material" which clearly indicates the instant invention's composition is based on an oil-based formula and not an oil only composition as argued by applicant. Further, the instant claim language does not exclude other components in the composition. As stated above the instant specification recites the optional inclusion of polyols such as glycerin and PEG up to 5%, which would cause an oil composition to form a dispersion. Therefore, the claim language "consisting essentially of" does not overcome prior art since the specification teaches the inclusion of other components.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vernon (4999187).**

Vernon teaches a hair treatment composition containing 60-70% petrolatum, 0.5-10% coconut oil, 0.5-15% mineral oil, and 0.25-5% almond oil, among other components. (Note col. 2, lines 13-30 and claim 1).

Vernon does not provide a specific example.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to manipulate the amount of oil taught by Vernon since Vernon teaches ranges that are suitable and will treat the hair and scalp.

***Information Disclosure***

The newly submitted prior art XP-002180876 and XP-002180877 made of record and not relied upon is considered pertinent to applicant's disclosure.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on June 17, 2002 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609(B)(2)(i). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is 703-305-2147. The examiner can normally be reached on M-F (7:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 703-308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3014 for regular communications and 703-305-3014 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 709-3080196.

SSG

*SSG*

October 24, 2002

*Michael G. Hartley*  
MICHAEL G. HARTLEY  
PRIMARY EXAMINER